



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

APR 11 1973

MEMORANDUM

TO: Reviewers of the Federal Consistency regulations

FROM: *for* Robert W. Knecht
Acting Assistant Administrator
for Coastal Zone Management

SUBJECT: Simplified Guidance for Understanding the Federal
Consistency Requirements.

On March 13, 1978, NOAA published in final form regulations which implement the Federal Consistency requirements (section 307) of the Coastal Zone Management Act of 1972, as amended (CZMA) — see 43 Federal Register 10510. In order to be fully responsive to the concerns of the public, the final regulations addressed, in a comprehensive fashion, a great number of issues which might arise during the administration of an approved coastal management program. The benefits of this result are that numerous uncertainties and potential conflicts may be avoided in light of the added specificity and detail in the regulations. However, a number of reviewers have expressed their concern that the regulations do not lend themselves easily to addressing the day-to-day, common proposals that will be subject to the Federal Consistency requirements. These reviewers have requested supplementary guidance to assist them in understanding, in a simplified manner, how the Federal consistency provisions will normally operate.

In order to be responsive to this demand for a simple guide to the operation of the Federal consistency requirements, the Office of Coastal Zone Management (OCZM) has developed the attached summary which highlights the workings of the Federal consistency provisions in the normal course of events. This "nutshell" version of the regulations emphasizes the basic operational steps for reviewing each of the Federal actions subject to the consistency requirements (i.e., Federal activities including development projects, Federal licenses and permits, Outer Continental Shelf (OCS) activities, and Federal assistance). As an aid to the reader, a matrix diagram has been included within the summary to portray the manner in which the consistency requirements apply to the various types of Federal actions described above.

When reading the summary, the reader is cautioned by the following observations. First, and most importantly, the summary is not meant to be a substitute for the Federal Consistency regulations. Familiarity with those regulations is essential for a full understanding of the CZMA's consistency requirements. Second, the summary does not address



many of the complex and unusual occurrences which may arise during the administration of an approved coastal management program (for example, the summary does not address a situation where a State, through monitoring, identifies a proposed Federal permit activity which it wants to review for consistency, and the applicant objects and the Federal agency requests Secretarial mediation — see §§930.54, 930.55 and 930.112 of the regulations) Resolution of these unique problems can only be accomplished by reference to the directives within the regulations. Finally, while every effort has been made to make certain that the summary adheres to the language in the regulations, in the event of inadvertent conflict the reader is directed to rely on the statements within the regulations.

I am hopeful that this "nutshell" version of the Federal Consistency regulations will promote a greater understanding and appreciation of the opportunities which exist to foster strengthened intergovernmental coastal planning and management following approval of a State's coastal management program.

If you have any questions or comments on the summary, please direct them either to Michael Shapiro ((202) 634-4249) or Jim Lawless ((202) 634-4245) of my staff.

Enclosure

FEDERAL CONSISTENCY IN A NUTSHELL

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Administrative Conflict resolution	Mediation by the Secretary	Appeal to the Secretary by applicant or independent Secretarial review	Appeal to the Secretary by person or in- dependent Secretarial review	Appeal to the Secretary by applicant agency or in- dependent Secretarial review
	(Subpart G)	(Subpart II)	(Subpart II)	(Subpart II)

FEDERAL CONSISTENCY MATRIX DIAGRAM

CZMA Section	307(c)(1) & (2) (Subpart C)	307(c)(3)(A) (Subpart D)	307(c)(3)(B) (Subpart E)	307(d) (Subpart F)
Federal Action	Direct Federal activities including development projects	Federally licensed and permitted activities	Federally licensed and permitted activities described in detail in OCS plans	Federal assistance to State and local governments
Coastal Zone Impact	Directly affecting the coastal zone	Affecting the coastal zone	Affecting the coastal zone	Affecting the coastal zone
Responsibility to notify State agency	Federal agency proposing the action	Applicant for Federal license or permit	Person submitting OCS plan	A-95 Clearinghouse receiving State or local government application for Federal assistance
Notification procedure	Alternatives chosen by Federal agency (subject to NOAA regulations)	Consistency certification	Consistency certification	OMB Circular A-95 notification procedures

Consistency requirement	Consistent to the maximum extent practicable with CZM Program	Consistent with the CZM Program	Consistent with the CZM Program	Consistent with the CZM Program
Consistency determination	Made by Federal agency (Review by State agency)	Made by State agency	Made by State agency	Made by State agency
Federal agency responsibility following a disagreement	Federal agency not required to disapprove action following State agency disagreement (unless judicially impelled to do so)	Federal agency may not approve license or permit following State agency objection	Federal agency may not approve Federal licenses or permits described in detail in the OCS Plan following State agency objection	Federal agency may not grant assistance following State agency objection
Administrative Conflict resolution	Mediation by the Secretary	Appeal to the Secretary by applicant or independent Secretarial review	Appeal to the Secretary by person or independent Secretarial review	Appeal to the Secretary by applicant agency or independent Secretarial review
	(Subpart G)	(Subpart H)	(Subpart H)	(Subpart H)

II. GENERAL DEFINITIONS

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State
Agency

The term "State agency" means the State coastal management agency administering CZMA grants or a single State agency designated by the CZM agency. The State agency is responsible for reviewing proposed Federal actions to assess their consistency with the approved coastal management program. The State agency may request review and comment from other State, regional, or local government agencies affected by the proposed Federal action.

b. Management
Program

The term "management program" means the document, prepared and adopted by a coastal state in accordance with the provisions of the CZMA, which sets forth objectives, policies and standards to guide public and private uses of lands and waters in the coastal zone. For Federal consistency to apply, the management program must be approved by the Assistant Administrator. Thereafter, proponents of Federal actions must ensure that their actions are consistent with the enforceable, mandatory provisions of the management program, and must give adequate consideration to management program provisions which are in the nature of recommendations.

c. Coastal
Zone

The term "coastal zone" means the coastal zone area delineated in a State's management program. All lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government are excluded from the coastal zone. The exclusion of Federal lands does not remove the application of the Federal consistency provisions when Federal actions on such lands cause spillover impacts that significantly affect resources or uses within the coastal zone.

d. Significantly
Affecting the
Coastal Zone

All Federal actions "significantly affecting the coastal zone" are subject to the Federal consistency requirements of the CZMA. This term is defined to include any Federal actions likely to cause significant (1) changes in the manner in which land, water, or other coastal zone natural resources are used, (2) limitations on the range of uses of coastal zone natural resources, or (3) changes in the quality of coastal zone natural resources. The significance of the changes or limitations caused by the Federal action are to be considered in terms of the primary, secondary and cumulative effects on the coastal zone. Once this test has been met, the State agency is entitled to review the Federal action to assess its consistency with the provisions of the management program.

e. Associated Facilities

"Associated facilities" include all forms of development which are (1) specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a Federal action, and (2) without which the Federal action, as proposed, could not be conducted. The proponent of a Federal action must consider whether the action and its associated facilities significantly affect the coastal zone and, if so, whether these interrelated activities satisfy the relevant consistency requirement of the CZMA. An example of an associated facility would include a proposed pipeline connection which must be constructed to meet the needs of a proposed Federal waste treatment facility. An example of non-associated facilities would include recreational housing which is induced by but not necessarily related to a Federal harbor dredging project.

III. DIRECT FEDERAL ACTIVITIES/DEVELOPMENT PROJECTS
307(c)(1) and (2) — 15 CFR Subpart 930-C.

a. Type of Action

The activities referred to in subsection 307(c)(1) and the development projects referred to in subsection 307(c)(2) are treated as a single class of Federal actions. "Development projects" have been defined to be a subset of "activities."

A development project includes any Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

Federal activities other than development projects may be viewed as a residual category covering Federal actions which are neither development projects nor actions covered by the license, permit and assistance subparts. Examples would include Federal agency activities requiring a Federal permit and Federal assistance to entities other than state and local governments.

b. Notification Procedures

In the event a Federal agency plans to undertake a Federal activity, including a development project, which is likely to significantly affect the coastal zone, it must notify the State agency of the proposal.

The method for notifying the State agency is determined by the Federal agency. Federal agencies are strongly encouraged to provide notification to States agencies through the use of existing procedures such as the CMB

A-95 process, National Environmental Policy Act (NEPA) environmental impact statements, memoranda of understanding etc., in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens.

Federal agencies must provide the State agency with notification at the earliest practicable time in the planning or reassessment of the action. At a minimum, notification must be provided to the State agency at least 90 days before final approval of the Federal action, unless both the Federal agency and the State agency agree to an alternative notification schedule.

c. Consistency
Determination

The Federal agency notification to the State agency must include a brief statement indicating how the proposed action will be undertaken in a manner consistent, to the maximum extent practicable, with the State's approved coastal management program.

The term consistent to the maximum extent practicable describes the requirement that Federal activities including development projects be fully consistent with the coastal program unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. In addition, deviations from full consistency are justified when unforeseen circumstances arising after the approval of the management program present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

The Federal agency's consistency determination must be based upon an evaluation of the relevant provisions of the management program. The consistency determination must also include a detailed description of the proposed action, its associated facilities, and their combined coastal effects, as well as data and information sufficient to support the Federal agency's conclusion.

As a preliminary matter, Federal agencies are strongly encouraged to obtain the views and assistance of the State agency regarding the provisions of the management program which are related to the proposal, and the information necessary to determine the consistency of the proposal.

d. State review

The State agency is required to respond to the Federal agency notification at the earliest practicable time. If a final response has not been issued within 45 days from receipt of the Federal agency notification, the Federal agency may presume State agency agreement.

State agency agreement shall not be presumed if the State agency, within the 45 day period, requests an extension of time for review. Federal agencies are required to approve one request for an extension period of not more than 15 days. Approval of longer or additional extension requests is left to the discretion of the Federal agency.

In most cases it can be expected that intergovernmental consultation during the State review period will ensure that the Federal activity will proceed in a manner consistent, to the maximum extent practicable, with the coastal program. At the same time the process will provide the State agency with information necessary to plan for and manage the anticipated coastal impacts which will result from the Federal proposal.

In the event the State agency disagrees with the Federal agency's consistency determination, the State agency must accompany its response with its reasons for the disagreement and supporting information. In this instance the Federal and State agencies should utilize the remaining portion of the 90-day notification period to attempt to resolve their differences. In cases of continuing disagreement, Federal agencies are encouraged to suspend implementation of the proposed activity beyond the 90-day notification period pending resolution of the disagreement.

When faced with a disagreement, Federal agencies are encouraged to reassess their consistency determination in light of State remarks, particularly when the State disagrees and suggests alternatives. Federal agencies are not required to delay or abandon implementation of proposed activities identified by the State as inconsistent with the coastal program so long as the Federal agency continues to maintain that the proposal is, in fact, consistent, to the maximum extent practicable, with the coastal program.

e. Conflict Resolution

There are a number of procedures that can be used when a disagreement regarding a consistency determination arises.

First, informal discussion between the parties is recommended. OCZM will be available to assist Federal and State agencies in these discussions.

Second, either the Federal or State agency may request mediation by the Secretary of Commerce. If the mediation process is agreed to by both agencies, a hearing officer will hold a public hearing to gather information on the disagreement, and the hearing record will be transmitted to the Commerce Secretary. The Secretary shall then schedule a mediation conference to be attended by the disagreeing agencies, and shall confer with the Executive Office of the President, as necessary, during the mediation process.

Third, if mediation efforts are unsuccessful, or are simply not utilized, either party may resort to judicial action to resolve the serious disagreement. Judicial review may be sought without first having exhausted the mediation process.

OCZM strongly encourages disagreeing Federal and State agencies to pursue informal discussions or the mediation process prior to resorting to litigation.

IV. FEDERAL LICENSES AND PERMITS
307(c)(3)(A) -- 15 CFR Subpart 930 -D

a. Type of Action

Federal licenses and permits include any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant. The only exception to this general rule is that leases issued pursuant to the Outer Continental Shelf

Lands Act (43 U.S.C. §§ 1331 et seq.) are not included.

An applicant includes any individual or organization, except a Federal agency, who following management program approval files an application for a Federal license or permit to conduct an activity which is likely to significantly affect the coastal zone.

b. Notification Procedures

State agencies are directed to include in the management program a list identifying Federal license and permit activities which reasonably can be expected to significantly affect the coastal zone. This list must be provided to Federal agencies who must, in turn, make the information available to applicants.

In addition, State agencies are encouraged to monitor, with the assistance of Federal agencies, unlisted Federal license and permit activities. Monitoring can be undertaken through the use of the OMB A-95 process, review of NEPA statements, memoranda of understanding, etc. The monitoring process is provided to ensure that the State is afforded an opportunity to review any Federal license or permit activity which reasonably can be expected to significantly affect the coastal zone.

No Federal license or permit described on a list or receiving approval through the monitoring process may be issued by the Federal agency until the requirements set forth below are satisfied.

c. Consistency Certifications

Supporting Information

When satisfied that the proposed activity is consistent with the provisions of the coastal management program, the applicant must provide in the application to the Federal agency a certification of consistency. The certification shall be in the following form.

"The proposed activity complies with (name of state) approved coastal zone management program and will be conducted in a manner consistent with such program."

A copy of the certification must also be provided to the State agency along with supporting information. The supporting information shall include a detailed description of the proposal, a brief assessment of the probable coastal zone effects, and a brief set of findings indicating that the proposed activity, its associated facilities, and their effects, are all consistent with the

provisions of the management program.

Interested parties may assist the applicant in providing information to the State agency, and the State agency must, upon request of the applicant, provide assistance for developing the assessment and findings required above.

d. State Review

State agency review begins at the time the State receives the applicant's consistency certification and the supporting information. Following receipt of this material, the State agency must ensure timely public notice of the proposed activity. The public notice must include a summary of the proposal, an announcement that public information submitted by the applicant is available for inspection, and a statement that comments may be submitted.

Federal and state agencies are strongly encouraged to issue joint public notices whenever possible to minimize duplication of effort and to avoid unnecessary delays.

At the discretion of the State agency, public notice may include the announcement of one or more public hearings. Federal and State agencies, again, are encouraged to hold joint public hearings in the event both agencies determine that a hearing on the action is necessary.

At the earliest practicable time, the State agency must notify the applicant and Federal agency whether it concurs with or objects to the consistency certification. Concurrence by the State agency shall be conclusively presumed in the absence of an objection within six months following commencement of State review.

If the State agency has not issued a decision within three months following the beginning of review, it must notify the applicant and Federal agency of the status of the matter and the basis for further delay.

In most cases it can be expected that as a result of consultation among the State and Federal agencies and the applicant, State concurrence will expeditiously occur followed by Federal approval of the permit application. This process will ensure that the activity is undertaken in a manner consistent with the coastal program and Federal law, and that the State is provided with information necessary to plan for and manage the anticipated coastal impacts which will result from the proposal.

In the event the State agency objects to the applicant's consistency certification, it must accompany its objection with reasons and supporting information. A State agency objection must include a statement informing the applicant of a right of appeal to the Secretary of Commerce on the grounds described below. Following receipt of a State agency objection to a consistency certification, the Federal permitting agency may not issue the license or permit except as provided below.

e. Conflict
Resolution

There are a number of procedures that can be used when a disagreement regarding a consistency certification arises.

First, informal discussions among the parties (Federal and State agencies and the applicant) are recommended.

OCZM will be available to assist in these discussions. When faced with a State objection, applicant's are encouraged to reexamine their proposals in light of State remarks, particularly when the State objects and suggests alternative strategies.

Next, the applicant may file a notice of appeal with the Secretary of Commerce within 30 days from receipt of the State's objection. The notice must be accompanied by supporting information. Copies of the notice and supporting information must be sent to the Federal and State agencies.

Following public notice, receipt of comments and, in some cases, a hearing, the Commerce Secretary shall determine whether the proposal is consistent with the objectives or purposes of the Federal Coastal Zone Management Act, or is necessary in the interest of national security.

If the Secretary finds that the proposal meets either of these two requirements, the Federal agency may approve the activity. If the Secretary does not make either of these two findings, the Federal agency is prohibited from approving the activity.

V. OUTER CONTINENTAL SHELF (OCS) ACTIVITIES
 307(c)(3)(B) -- 15 CFR Subpart 930-E.

- a. Type of Action In this case we are concerned with any plans for the exploration or development of, or production from, any area which has been leased under the OCS Lands Act (43 U.S.C. §1331 et seq.) and the regulations under that Act, which are submitted to the Secretary of the Interior following management program approval, and which describe in detail Federal license and permit activities (e.g., drilling, platform placement, etc.).
- b. Notification Procedures Except for States which do not anticipate coastal zone effects resulting from OCS activities, management program lists required by the Federal License and Permit regulations (described in Part IV(b)) must include a reference to OCS plans. The list is to be provided to the Department of the Interior which will, in turn, make the information available to OCS oil and gas lessees and operators.
- Any person submitting to the Interior Department any OCS plan must provide Interior with a consistency certification, attached to the OCS plan, and must furnish the State agency with a copy of the OCS plan (excluding proprietary information) and a consistency certification. No Federal license or permit activity described in detail in an OCS plan may be approved by a Federal agency until the requirements set forth below are satisfied.
- c. Consistency Certification Supporting Information When satisfied that the proposed activities described in detail in the OCS plan meet the Federal consistency requirements, the OCS lessee or operator shall declare in the consistency certification that:

"The proposed activities described in detail in this plan comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s)."

Supporting information to accompany the certification will include the comprehensive offshore, nearshore and onshore data and material required by the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 CFR §250.34) and regulations pertaining to the Interior OCS information program (see 30 CFR Part 252). The supporting information must also include a brief assessment of the probable coastal zone effects, and a brief set of findings indicating that the proposed activities, their associated facilities, and their combined effects, are all consistent with the provisions of the management program.

Interested parties may assist the person in providing information to the State agency, and the State agency must, upon request of the person, provide assistance for developing the assessment and findings required above.

d. State
Review

State agency review begins at the time the State receives the person's OCS plan, consistency certification and supporting information. Following receipt of this material, the State agency must ensure timely public notice, and may hold one or more public hearings. For further details on public notice and public hearings, see Part IV(d) above.

At the earliest practicable time, the State agency must notify the person and Federal agency whether it concurs with or objects to the consistency certification. If the State agency issues a concurrence, it must notify both the Secretary of Commerce and the Secretary of the Interior. Concurrence by the State agency shall be conclusively presumed in the absence of an objection within six months following commencement of State review.

If the State agency has not issued a decision within three months following the beginning of review, it must notify the person and the Department of the Interior of the status of the matter and the basis for further delay.

In most cases it can be expected that as a result of consultation among the State and Federal agencies and the OCS lessee or operator, State concurrence will expeditiously occur followed by Interior approval of the OCS plan. This process will ensure that the activities described in the OCS plan are undertaken in a manner consistent with both the coastal management program and Interior requirements, and that the State is provided with information necessary to plan for and manage the anticipated coastal impacts which will result from OCS activities.

If the State agency issues a concurrence or is conclusively presumed to concur, the person will not be required to submit additional certifications and supporting information for State review at the time Federal applications are actually filed for the Federal permit activities described in detail in the OCS plan. The lessee or operator must, however, supply the State agency with copies of permit applications to allow the State to monitor the approved OCS activities.

In the event the State agency objects to the person's OCS plan certification, it must accompany its objection with reasons and supporting information concerning each

activity which the State finds to be inconsistent with the management program. A State agency objection must include a statement informing the person of a right of appeal to the Secretary of Commerce on the grounds described below. Following receipt of a State agency objection, Federal agencies may not issue any of the licenses or permits for activities described in detail in the OCS plan, except as provided below.

e. Conflict Resolution

There are a number of procedures that can be used when a disagreement regarding an OCS plan certification arises.

Appeal

First, informal discussions among the parties (Department of the Interior, State agency and the OCS lessee or operator) are recommended. OCZM will be available to assist in these discussions. When faced with a State objection, lessees and operators are encouraged to adopt amended or new OCS plans which conform to alternative strategies proposed by the State.

Next, the person may file a notice of appeal with the Secretary of Commerce within 30 days from receipt of the State's objection. The notice must be accompanied by supporting information. Copies of the notice and supporting information must be sent to the Department of the Interior and the State agency.

Following public notice, receipt of comments and, in some cases, a hearing, the Commerce Secretary shall determine whether each of the objected to OCS activities is consistent with the objectives or purposes of the Federal Coastal Zone Management Act or is necessary in the interest of the national security.

If the Secretary finds that all of the objected to OCS activities meet either of these two requirements, the Department of the Interior may approve the OCS plan and issue permits. If the Secretary does not make either of these two findings, the person must submit an amended or new OCS plan to the Interior Department and to the State agency, along with a new consistency certification and supporting information. State review will begin again, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

VI. FEDERAL ASSISTANCE
307(d) — 15 CFR Subpart 930-F

a. Type of Action The term "Federal assistance" means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. An applicant agency refers to any unit of State or local government which, following management program approval, submits an application for Federal assistance.

b. Notification Procedures The State agency shall be notified of the Federal assistance application as a result of the Office of Management and Budget (OMB) A-95 process, which provides for the evaluation, review and coordination of Federally assisted programs (see 41 Federal Register 2052 (1976)).

To assist A-95 State and areawide clearinghouses, State agencies are encouraged to include within the management program a listing of specific types of Federal assistance programs which may significantly impact the coastal zone. The State agency may also provide a description of a geographic area, which is broader than the coastal zone, to indicate the sites where Federal assistance projects may cause significant coastal zone effects (e.g., in coastal floodplains). The recommended list and geographic provision are to be provided to Federal agencies, units of State or local government empowered to undertake Federally assisted activities, and to the A-95 clearinghouses.

c. State Review The A-95 clearinghouses must ensure that the State agency is afforded an opportunity to review proposed Federal assistance projects. If during the OMB A-95 process the State agency does not object to the proposal, the Federal agency may grant the Federal assistance.

In most cases it can be expected that as a result of consultation among the State and Federal agencies and the applicant agency, State approval will expeditiously occur followed by Federal approval of the assistance request. This process will ensure that public funds are expended not only in accordance with Federal law, but also in a manner which provides that the project will be consistent with the coastal management program. In addition, the State will be provided with information necessary to plan for and manage the anticipated coastal impacts which will result from the proposal.

In the event the State agency objects to the applicant agency's proposal, it must accompany its objections with reasons and supporting information. The A-95 clearinghouse must then notify the applicant agency and the Federal agency of the State's objection and must inform the applicant agency of its right to appeal to the Secretary of Commerce on the grounds described below. Following receipt of the State agency objection, the Federal agency may not grant the Federal assistance except as provided below.

d. Conflict Resolution

There are a number of procedures that can be used when a disagreement arises regarding the consistency of a Federal assistance proposal.

First, informal discussions among the parties (Federal and State agencies and the applicant agency) are recommended. OCZM will be available to assist in these discussions. When faced with a State objection, applicant agencies are encouraged to re-examine their proposals in light of State remarks, particularly when the State suggests alternative strategies.

Next, the applicant agency may file a notice of appeal with the Secretary of Commerce within 30 days from receipt of the State's objection. The notice must be accompanied by supporting information. Copies of the notice and supporting information must be sent to the Federal and State agencies.

Following public notice, receipt of comments and, in some cases, a hearing, the Commerce Secretary shall determine whether the proposal is consistent with the objectives or purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security.

If the Secretary finds that the proposal meets either of these two requirements, the Federal agency may grant the assistance. If the Secretary does not make either of these two findings, the Federal agency is prohibited from providing the financial aid.

DEPARTMENT OF TRANSPORTATION ROUTE SLIP		DATE March 11, 1983
TO: NAME	ORG/RTG SYMBOL	
Mr. George Osborne	HEP-04	
Director, Office of Environmental		
Programs		
Atlanta, Georgia		
<input checked="" type="checkbox"/> PER YOUR REQUEST <input type="checkbox"/> FOR YOUR INFORMATION <input type="checkbox"/> PER OUR CONVERSATION <input type="checkbox"/> NOTE AND RETURN <input type="checkbox"/> DISCUSS WITH ME <input type="checkbox"/> FOR YOUR APPROVAL		<input type="checkbox"/> FOR YOUR SIGNATURE <input type="checkbox"/> COMMENT <input type="checkbox"/> TAKE APPROPRIATE ACTION <input type="checkbox"/> PLEASE ANSWER <input type="checkbox"/> PREPARE REPLY FOR SIGNATURE OF _____
REMARKS:		

This responds to your recent request for comments on a letter from Division Administrator, Carpenter to the Florida Department of Environmental Regulation.

We fully agree with Mr. Carpenter's statement that consistency determinations should be clear and concise. The CZM regulations (15CFR 930, subpart F) instruct the State management agency to provide either an object or no-object answer to all consistency requests. Only upon objection to the proposed project do the regulations direct the CZM agency to provide additional comments. All objections must be accompanied by: 1) reasons for the consistency denial and 2) suggested alternative actions that would make the project consistent with the State CZM Plan.

Conditions placed on consistency approvals are not authorized by the regulations. If the CZM agency does not object to the project (i.e. the project is consistent) but also imposes conditions, the agency is actually disapproving the project as proposed.

Hopefully, the Division's arguments will resolve this problem. However, if the State continues to receive project approvals as described in Mr. Carpenter's letter, we suggest that the actions be authorized to proceed assuming consistency with the CZM Plan. Any additional comments attached to consistency approval should be addressed only in respect to the normal A-95 process of coordination for the purposes of fulfilling the NEPA.

FROM: Larry Isaacson, Chief Environmental Analysis Division	TELEPHONE NO. 426-9173	ORG/RTG SYMBOL HEV-20
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